

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE : MDL No. 1720(MKB)(VMS)  
FEE AND MERCHANT DISCOUNT :  
ANTITRUST LITIGATION : Civil No. 05-5075(MKB)(VMS)  
: RULE 23(b)(3) CLASS COUNSEL'S  
This Document Relates To: : MONTHLY REPORT REGARDING THIRD-  
: PARTY ENTITIES  
: ALL ACTIONS.  
: X

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## **I. INTRODUCTION**

At the September 7, 2023 Status Conference, the Court requested that Rule 23(b)(3) Class Counsel (“Class Counsel”) provide monthly reports to the Court regarding issues relating to third-party claim filers. Class Counsel previously provided reports by entity. This Report will provide general information regarding third-party issues and, to the extent relevant, information regarding any entity-specific matters.

For the past several years, formally since November 2019, Class Counsel has tasked Epiq Systems, Inc. (“Epiq” or the “Class Administrator”) with providing monthly reporting regarding class member concerns or complaints regarding third-party claims-filing entities as well as claim-buying entities. Class Counsel follows up on these concerns where appropriate. Numerous issues have been handled informally, without Court intervention, and others have been brought to the Court’s attention when the informal process did not result in needed changes by the third party. For the most part, prior to the Settlement becoming final, problems were fairly infrequent and quickly handled. However, with the claims process ramping up, there has been a small, but noticeable increase in class member calls. We expect this to further increase as the claims process moves forward. Monitoring efforts are similarly increasing. Epiq continues to alert Class Counsel to new issues as they arise in addition to the monthly reporting process already in place. Edits to call-center scripting are being drafted to provide additional information to class members regarding third parties.

## **II. CURRENT THIRD-PARTY ISSUES**

Since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers. On August 18, 2023, Epiq sent an email to a list of 134 third parties, based on

data that has been gathered by Class Counsel and Epiq over the years. The text of that communication from Epiq was as follows:

Dear Third Party or Aggregated Claims Filer,

With respect to the Payment Card Interchange Fee Settlement (*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (MKB) (VMS)), the time for all appeals has passed, and the parties are currently preparing for administration of the claims process. Please be patient. Further updates will be posted as soon as they become available.

In the meantime, we are currently at a point where we are ready to accept submission of Proof of Authority documentation for Third-Party Filers on behalf of their clients. We know many of you have continued to Pre-Register via the case website while the appeals were active. In order to more efficiently associate your preregistration with your client's claim, you will be asked to complete an Excel template that includes your list of clients by Business Entity Name and their associated Tax Identification Number(s) ("TIN(s)").

Even if you previously submitted Proof of Authorization documentation, you will need to resubmit Proof of Authorization documentation that includes at least the following elements:

- Full Legal Name of your Client/Business Entity
- TIN(s) for your Client/Business Entity
- Signature (with date) by your Client Contact
- Title of your Client Contact
- An indication that your Client Contact had signatory authority for that Business Entity (for example, title)
- An indication that the authorization applies to the Payment Card case
- Language authorizing you to file claims on behalf of your Client/Business Entity
- Language authorizing you to receive payment on behalf of your Client/Business Entity (if receiving payment on behalf of your Client)

Please note that we are willing to accept resubmission of older or previously-submitted documentation for review, provided that documentation includes all of the requirements listed above.

When you are ready to submit all Proof of Authorization forms on behalf of your clients, please let the Class Administrator know by emailing [bulkfiler@paymentcardsettlement.com](mailto:bulkfiler@paymentcardsettlement.com).

Submission of materials that comply with the above list does not mean that your Proof of Authorization has been automatically accepted by the Class Administrator. Once review of your submission is complete, you will be notified regarding the status of your submission(s).

Following that communication, Epiq and Class Counsel have been in constant contact with various third parties. Of note, 24 third-party filers have provided some form of documentation such as a list of third-party clients with TINs or have provided an estimated count of clients. We have encouraged the use of a specially created email address – [bulkfiler@paymentcardsettlement.com](mailto:bulkfiler@paymentcardsettlement.com) so that issues raised by third parties are appropriately directed.

Thus far, third-party filers have claimed to represent upwards of 163,000 clients. Epiq has received roughly 14,500 agreements to date, but none yet from the 2 third-party entities purporting to have the largest client bases. All agreements received are subject to a review process.

### **III. SUGGESTED OUTREACH AND UPDATED MESSAGING**

Epiq and Class Counsel receive calls and emails daily from various third parties, seeking information regarding the claims process. To that end, Class Counsel suggests two steps be taken in the coming weeks: (1) that the required disclaimer language be updated, beginning December 1, 2023, to account for the claims process; and (2) that a webinar or conference call be held to further discuss general issues related to third parties where Class Counsel and Epiq can efficiently provide a general, uniform message and respond to commonly asked questions from interested parties.

The required Court-ordered disclaimers that must accompany all solicitations “in any form including websites, mail and email solicitations, contracts, telephone and in-person solicitations” are as follows<sup>1</sup>:

1. A statement that claim forms are not yet available.
2. A statement making clear that class members need not sign up for a third-party service in order to participate in any monetary relief and explaining that no-cost assistance will be available from the Class Administrator and Class Counsel during the claims-filing period.
3. Information directing class members to the Court-approved website for additional information.

ECF 7260 at 1.

The proposed new disclaimers are as follows (to be required by December 1, 2023):

1. Claim forms are being delivered and are available online beginning December 1, 2023.
2. Class members need not sign up for a third-party service in order to participate in any monetary relief.
3. No-cost assistance is available from the Class Administrator and Class Counsel during the claims-filing period.
4. Information directing class members to the Court-approved website for additional information.

As the claims process begins, additional or different disclaimers may be suggested.

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<sup>1</sup> See Order Regarding Third-Party Claims-Filing Services (ECF 7260) at 1.

#### **IV. OTHER ISSUES**

A few other calls have come in to Epiq recently, but all seem to be general questions as to whether a class member must use a third-party claims filing company. The current customer service scripting seems to be working well for general concerns. That response is as follows:

Some companies may offer to help you file your claim in exchange for a portion of your recovery from the settlement. These companies are sometimes called third-party claims filers. Before you decide to use one of these companies, you need to know that you can file with the Class Administrator on your own, free of charge. You are also entitled to contact the Class Administrator or the Rule 23(b)(3) Class Counsel for assistance, again at no cost to you. In addition, there are prior Court orders regarding third-party claims-filing companies that might be helpful to you. These documents are available on the homepage of the case website.

#### **V. CONCLUSION**

Class Counsel will continue to apprise the Court regarding third-party issues via monthly reports and will bring urgent matters to the Court's attention via letter. The next monthly report will be filed on November 3, 2023.

DATED: October 5, 2023

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